

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

In re:

THE FINANCIAL OVERSIGHT AND  
MANAGEMENT BOARD FOR PUERTO  
RICO,

as representative of

THE COMMONWEALTH OF PUERTO  
RICO, et al.,

Debtors.<sup>1</sup>

PROMESA

Title III

No. 17 BK 03283-LTS

(Jointly Administered)

In re:

THE FINANCIAL OVERSIGHT AND  
MANAGEMENT BOARD FOR PUERTO  
RICO,

as representative of

THE EMPLOYMENT RETIREMENT  
SYSTEM OF THE COMMONWEALTH OF  
PUERTO RICO (“ERS”),

Debtor.

PROMESA

Title III

No. 17 BK 03566-LTS

**BRIEF REPLY**

**TO THE HONORABLE COURT:**

Individual Plaintiffs, Pedro José Nazario Serrano; Joel Rivera Morales; María de Lourdes Gómez Pérez; Héctor Cruz Villanueva; Lourdes Rodríguez y Luis M. Jordán Rivera, all of them

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<sup>1</sup> The Debtors in these Title III cases, along with each Debtor’s respective Title III case number and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17-BK-3283 (LTS)) (Last Four Digits of Federal Tax ID: 3481); (ii) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17-BK-3566 (LTS)) (Last Four Digits of Federal Tax ID: 9686); (iii) Puerto Rico Highways and Transportation Authority (Bankruptcy Case No. 17-BK-3567 (LTS)) (Last Four Digits of Federal Tax ID: 3808); (iv) Puerto Rico Sales Tax Financing Corporation (Bankruptcy Case No. 17-BK-3284 (LTS)) (Last Four Digits of Federal Tax ID: 8474); and (v) Puerto Rico Electric Power Authority (Bankruptcy Case No. 17-BK-4780 (LTS)) (Last Four Digits of Federal Tax ID: 3747) (Title III case numbers are listed as bankruptcy case numbers due to software limitations).

Retirees/Beneficiaries and Plaintiffs in a claim for damages described below that is currently pending in the Commonwealth of Puerto Rico Court of First Instance, San Juan Part (the “Commonwealth Court”) without submitting to the jurisdiction of this Court, very respectfully State and Pray as follows:

1. The Individual Plaintiffs, Retirees/Beneficiaries, Pedro José Nazario Serrano; Joel Rivera Morales; María de Lourdes Gómez Pérez; Héctor Cruz Villanueva; Lourdes Rodríguez y Luis M. Jordán Rivera, have received and reviewed the “*RESPONSE OF THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD TO URGENT OBJECTION OF INDIVIDUAL PLAINTIFFS RETIREES AND BENEFICIARIES OF THE ERS TRUST TO THE MODIFIED EIGHTH AMENDED TITLE III JOINT PLAN OF ADJUSTMENTY OF THE COMMONWEALTH OF PUERTO RICO, ET AL.* (hereinafter the “*Response*”). [ECF Document No. 19791].

2. Although counsel for the Financial Oversight and Management Board for Puerto Rico (“FOMB”) labels the Individual Plaintiffs’ motion as “untimely”, they candidly acknowledge that the inclusion of the “UBS Action in the definition of the ‘ERS Litigation’ was in error.” (Response, ¶ 4). Indeed, the “error” was significant and could have been devastating for the Individual Plaintiffs Retirees and for the ERS.

3. We are filing this motion because we believe the Court deserves an explanation as to why the motion of the Individual Plaintiffs Retirees was not untimely.

4. As counsel for the FOMB candidly concedes on April 2, 2021 [ECF Document No.18791-9] a stipulation was reached disposing of the ERS bondholder claims. That stipulation provided that “...**nothing herein shall stay or prevent the commencing, continuing, filing, or otherwise pursuing any claims or actions in connection with that certain action captioned as *Administración de los Sistemas de Retiro de los Empleados del Gobierno y la Judicatura de Puerto Rico, et al. v. UBS Financial Services. Inc. of Puerto Rico, et al.*, Civil No. KAC-2011-1067 (803), currently pending in the Commonwealth of Puerto Rico Court of First Instance, San Juan Part.**” On the basis of that stipulation, the Individual Plaintiffs never suspected that, somehow or someone

would subsequently attempt to obtain the dismissal of the Commonwealth Court litigation by surreptitiously inserting language to that effect in the Joint Plan of Adjustment. Fortunately, one of our team members, in reviewing the latest version of the Joint Plan of Adjustment, noticed the reference to the Commonwealth Court litigation filed by the Individual Plaintiffs Retirees and our “Urgent Motion” followed. [ECF Document No. 19766].

5. What counsel for the FOMB has not explained is how and why, after the April 2, 2021 stipulation, that erroneous language was introduced in the Joint Plan of Adjustment and more importantly, by whom. Essentially, that language would have induced the Court to approve a plan contrary to the Stipulation. Had it been approved by this Court, it would have totally released UBS Financial from significant exposure without any consideration whatsoever, and would have been devastating for the Individual Plaintiffs Retirees and for the ERS.

**WHEREFORE**, it is respectfully requested that the Court take notice of the above and to enter any order it may deem appropriate under the circumstances.

**RESPECTFULLY SUBMITTED.**

**WE HEREBY CERTIFY:** That on this same date a true and exact copy of this motion was filed with the Clerk of Court using CM/ECF system, which will notify a copy to counsel of record. Also, copy of this document will be notified via electronic mail to all case participants.

In San Juan, Puerto Rico, this 18th day of January 2022.

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